IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
Case No. 5:10-cv-28-RLV

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| CHRISTOPHER ISLAR,<br><br>Plaintiff,<br><br>vs.<br><br>SGT. HICKS, CORRECTIONAL OFFICERS<br>CAPUTO, PENNELL, BARKER, and CURTIS,<br><br>Defendants. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | AMENDED ANSWER OF DEFENDANT<br>CORRECTIONAL OFFICER CAPUTO<br>(Jury Trial Demanded) |

The defendant, David A. Caputo (defendant) by and through undersigned counsel, answers the complaint of the plaintiff as follows:

First Defense

The complaint fails to state a claim against the defendant upon which relief can be granted.

Second Defense

The defendant answers each allegation of the plaintiff as follows:

Preliminary Statement

1. Denied; defendant is without information sufficient to form a belief as to the truth or falsity of whether plaintiff is an indigent.

Jurisdiction

2. Admit that the statutes speak for themselves. Deny that plaintiff has any claim here.

Venue

3. Admit that venue is proper in this Court. Deny that plaintiff has a sufficient claim.

## Parties

4. Admit.

5. Admit.

6. Admit.

7. [No allegation in complaint].

8. Admit.

## Factual Allegations

9. Admit.

10. Deny. In early March of 2007 defendant was passing out food trays and several of the inmates would not move away from their trap doors to their cells, so defendant did not open them, to protect himself from assault. Defendant continued to hand out the food trays to inmates that were in compliance with standard operation procedure. Standard operating procedure called for the inmates to be away from their doors to receive the food trays; otherwise, the inmates could cause harm to the correctional officers by attacking them and throwing things at them, including their own feces which was normal practice, when they open the food tray doors. Several inmates, including the plaintiff, began kicking their cells doors and yelling obscenities, and demanding that defendant call the Sergeant on the radio and get him in there. Defendant continued pass out the food trays to the inmates that were in compliance. After completing the food trays, defendant reported the incident to the Sergeant. The Sergeant went into the wing and spoke with several inmates. Three of the inmates refused to settle down. At this point the cell extraction team was contacted. The three inmates in question were forcibly extracted from their cell.

11. Admit that on April 28, 2007, the plaintiff initially submitted to restraints by sticking his hands out to be handcuffed. Deny that defendant seized plaintiff's left hand and aggressively twisted it upwards, causing plaintiff pain. Deny that due to the pain, plaintiff attempted to free himself from defendant's grip. Admit that defendant subsequently released the handcuffs, but deny that this caused plaintiff to fall to the ground. Defendant submits that after he secured one of the handcuffs on the plaintiff, plaintiff yanked on the chain to pull defendant into the recreation cage, thus assaulting and battering defendant. Defendant released the chain at that time in self-defense, and self-protection, and plaintiff lost his balance and fell backwards.

12. Admit that defendant then called Sgt. Hicks to the recreation area. Admit that defendant told Sgt. Hicks that plaintiff had attempted to pull defendant's hand through the cage fence. Defendant is without knowledge or information sufficient to form a belief as to the

truth of what plaintiff told Sergeant Hicks. Admit that after speaking to Sgt. Hicks, plaintiff submitted to restraints.

13. Deny. Sgt. Hicks ordered defendant to escort plaintiff back to his cell.

14. Admit that upon arrival at plaintiff's cell, defendant and Pennell removed plaintiff's leg shackles. Plaintiff was then facing defendant. Defendant went to insert his key in the padlock to for the plaintiff's waist chain to release same, and plaintiff forcibly jerked away from the defendant acting in an assaultive manner towards and assaulting defendant. Deny that plaintiff saw Curtis and Barker standing in his cell door and that he asked those officers to get defendant away from him. Deny that plaintiff's pleas were ignored.

15. Deny, in that when defendant was trying to release the waist chain from the inmate, plaintiff forcefully jerked his body away from the defendant. Plaintiff had no leg restraints on. At this time, fearing an assault from the plaintiff, in the form of being kicked, head-butted, bitten, or spit upon, the defendant, in self-defense, took hold of the inmate and moved him to the back wall and then down to the bunk. Deny that while plaintiff was positioned on his knees on the bunk, defendant slammed plaintiff's head against the wall. Deny that Barker and Pennell then grabbed plaintiff's feet and jerked them out from under him, causing plaintiff to fall face forward on the bunk. Deny that defendant positioned himself on plaintiff's back. Defendant, acting in self-defense from the aggressive actions of the plaintiff and from an assault by the plaintiff, had two hands on plaintiff and a knee in his back to hold plaintiff down as he was thrashing about.

16. Deny that plaintiff was not resisting the officers. Admit that that defendant told plaintiff to stop resisting, and assaulting defendant in the process, or be sprayed. Plaintiff was being very aggressive and forceful with the defendant in this entire process, and defendant was fearful for his safety. Deny that defendant took his can of pepper spray, placed it next to plaintiff's right eye, and sprayed directly into plaintiff's eye. Defendant took the can from its holster, shook it a couple of times and sprayed from his hip. The rest of the allegations in this paragraph are denied.

17. Deny. Sgt. Hicks, Curtis, Pennell and Barker came into the cell to attempt and control plaintiff from assaulting defendant. Defendant had called Sgt. Hicks for help with the situation on his radio, and that's why the other officers were there. Defendant in no way was assaulting the plaintiff; to the contrary, the plaintiff was being very aggressive and very hostile towards the defendant, assaulting and battering the defendant, and the defendant was justifiably defending himself, throughout the whole process.

18. Deny the entire paragraph, except admit that Sgt. Hicks escorted plaintiff to a shower to decontaminate from pepper spray, as this is standard operating procedure.

19. Deny.

First Cause of Action

20. The answers of defendant in paragraphs 1-19 are incorporated herein by reference and re-alleged as if fully set forth herein.

21. Deny.

22. Deny.

Second Cause of Action

23. The answers of defendant in paragraphs 1-22 are incorporated herein by reference and re-alleged as if fully set forth herein.

24. Deny.

25. Deny.

Third Cause of Action

26. The answers of defendant in paragraphs 1-25 are incorporated herein by reference and re-alleged as if fully set forth herein.

27. Deny.

28. Deny.

Fourth Cause of Action

29. The answers of defendant in paragraphs 1-28 are incorporated herein by reference and re-alleged as if fully set forth herein.

30. Deny.

31. Deny.

32. Deny.

Third Defense

The actions of defendant were done while acting within the scope and duties of his employment, and authorized, including being ordered by Sgt. Hicks to escort the plaintiff to his cell.

Fourth Defense

Plaintiff is in prison for several counts of armed robbery, serving lengthy prison sentences; while in custody plaintiff has accumulated numerous infractions regarding his unacceptable and bad behavior, including but not limited to assault on officers, disobeying orders and threatening staff members; and, defendant submits that the plaintiff a very aggressive and hostile individual, and has no credibility.

Fifth Defense

Defendant denies that he deprived the plaintiff of any federal constitutional or statutory right.

Sixth Defense
Eleventh Amendment Immunity

To the extent plaintiff seeks to recover money damages from defendant in his official capacity, said damages are barred by the Eleventh Amendment and sovereign immunity, and the State of North Carolina has not consented to suit or otherwise waived such immunity.

Seventh Defense
Qualified Immunity

Actions by defendant of which plaintiff complains are within the legitimate exercise of professional judgment and authority pursuant to the existing protocols and standing orders and did not violate plaintiff's constitutional rights. Therefore, qualified immunity bars plaintiff's claim for monetary damages.

Defendant did not violate clearly established constitutional rights of which a reasonable person would have known. Consequently, qualified immunity bars plaintiff's claim for monetary damages.

First Affirmative Defense

The plaintiff's actions towards the defendant amounted to an assault and battery upon the defendant, and any actions on defendant's part during the incidents in question were in defense of self, and legally justified.

WHEREFORE, the defendant prays this Court as follows:

1. For an order dismissing the plaintiff's complaint with prejudice.

2. That the plaintiff have and recover nothing from the defendant.

3. For an order awarding costs and a reasonable attorney's fee to the defendant for his defense of this action.

4. For such other and further relief to which the defendant is entitled and this Court deems just and proper.

This the 11th day of November, 2010.

*/s/ J. Elliott Field*______________________
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*Attorney for Defendant*
*Correctional Officer David A. Caputo*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that I electronically filed the foregoing AMENDED ANSWER OF DEFENDANT CORRECTIONAL OFFICER CAPUTO with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Plaintiff's Counsel of record: J. Phillip Griffin, Jr.
pgriffin@ncpls.org

co-Defendant Barker, Hicks, and Curtis' Counsel of record:

Yvonne B. Ricci
yricci@ncdoj.gov

Further, the undersigned certifies that a copy of the foregoing was served this day on co-Defendant Pennell by depositing a copy of same in the United States mail, postage prepaid, addressed at the following addresses:

C.O. Pennell
6658 Stone Mountain Road
Lenoir, NC 28645

This the 11th day of November, 2010.

*/s/ J. Elliott Field*
Attorney for Defendant Caputo